



COASTAL APPEALABLE FORM

SAN LUIS OBISPO COUNTY DEPARTMENT OF PLANNING AND BUILDING

976 OSOS STREET • ROOM 200 • SAN LUIS OBISPO • CALIFORNIA 93408 • (805) 781-5600

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#848

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SLO COUNTY
PLANNING/BUILDING
DEPT

Please Note: An appeal should be filed by an aggrieved person or the applicant at each stage in the process if they are still unsatisfied by the last action.

PROJECT INFORMATION

Name: Sheridan Properties

File Number: DRC 2005-00073 APN(5)

Type of permit being appealed:

- ☐ Plot Plan ☐ Site Plan ☐ Minor Use Permit ☒ Development Plan/Conditional Use Permit
☐ Variance ☐ Land Division ☐ Lot Line Adjustment ☐ Other: _____

The decision was made by:

- ☐ Planning Director (Staff) ☐ Building Official ☐ Planning Department Hearing Officer
☐ Subdivision Review Board ☒ Planning Commission ☐ Other: _____

Date the application was acted on: 11/3/11

The decision is appealed to:

- ☐ Board of Construction Appeals ☐ Board of Handicapped Access
☐ Planning Commission ☒ Board of Supervisors

BASIS FOR APPEAL

☒ INCOMPATIBLE WITH THE LCP. The development does not conform to the standards set forth in the Certified Local Coastal Program of the county for the following reasons (attach additional sheets if necessary)

Explain: attached

☐ INCOMPATIBLE WITH PUBLIC ACCESS POLICIES. The development does not conform to the public access policies of the California Coastal Act – Section 30210 et seq of the Public Resource Code (attach additional sheets if necessary).

Explain: _____

List any conditions that are being appealed and give reasons why you think it should be modified or removed.

Condition Number 46, 24 Reason for appeal (attach additional sheets if necessary)

attached

APPELLANT INFORMATION

Print name: SIERRA CLUB

Address: P.O. Box 15755, SLO 93406 Phone Number (daytime): 543-8717

I/We are the applicant or an aggrieved person pursuant to the Coastal Zone Land Use Ordinance (CZLUO) and are appealing the project based on either one or both of the grounds specified in this form, as set forth in the CZLUO and State Public Resource Code Section 30603 and have completed this form accurately and declare all statements made here are true.

Signature: John Christ

Date: 11/10/11

OFFICE USE ONLY

Date Received: 11/14/11

By: NAR

Amount Paid: 0

Receipt No. (if applicable): 0

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JULY 1, 2010
PLANNING@CO.SLO.CA.US

Sierra Club - Basis for Appeal: DRC 2005-00073

The project proposes to weed and monitor a stand of the endangered Nipomo Mesa lupine during the construction phase of the project, and to monitor the lupine for a term of three years beyond completion of the development plan. The proposed easement does not specifically exclude all non-conservation related activities within the easement area. The project will have an adverse impact by limiting the range of this species, which will never be able to expand on the project site beyond the proposed fence. As control measures for invasives and non-native weeds appear to cease at the end of construction, and as monitoring by itself is not mitigation and even monitoring may cease within three years, and as no meaningful performance standards are included to ensure that appropriate corrective or remedial action is taken if the long-term survival of the endangered lupine is jeopardized, the measures proposed are not protective of a unique plant habitat area as required by the LCP. Thus, the project's mitigation measures provide only temporary protection for an endangered/unique plant species for which long-term protection must be assured.

For these reasons, the permit is inconsistent with Coastal Plan Policies protecting environmentally Sensitive Habitats and Terrestrial Environments, specifically Policies 1, 2, 3, 27, 28 and 33. The permit does not conform with Coastal Zone Land Use Ordinance 23.07.176a. – Protection of vegetation. "Vegetation that is rare or endangered, or that serves as habitat for rare or endangered species shall be protected. Development shall be sited to minimize disruption of habitat."

Policy 2 of Coastal Plan Policies for Environmentally Sensitive Habitats requires "*As a condition of permit approval, the applicant is required to demonstrate that there will be no significant impact on sensitive habitats and that proposed development or activities will be consistent with the biological continuance of the habitat. This shall include an evaluation of the site prepared by a qualified professional which provides: a) the maximum feasible mitigation measures....*" The apparently arbitrary selection of a period of three years for monitoring of the lupine is not consistent with the biological continuance of habitat, nor is following this period with a nonbinding recommendation from a biologist and the selection of a vague and unclear standard of leaving the site in a condition "as good as we find it." These measures also fail to meet the CEQA standard for substantial evidence that impacts will be mitigated to a level that is less than significant.

Under CEQA Significance Criteria, a project would be considered to have a potentially significant biological impact if it would have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plan, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. In view of this and the significant impacts identified above, the project requires the preparation of an Environmental Impact Report.

The conclusion that project impacts to groundwater supply, including potential shortages and seawater intrusion, can be adequately mitigated is not supported by the analysis provided. Of the three proposed mitigations -- pay a fee to the County, pay a fee to NCSD, and retrofits -- the first does not exist, the second is dependent on a future vote, and the third does not constitute adequate mitigation. Planning staff's admission (at the Planning Commission meeting of 11/3/11) that there probably is not adequate opportunity to mitigate groundwater impacts in Nipomo through retrofits constitutes an admission that the County has not analyzed the feasibility of proposed mitigations for the project's impacts on groundwater supply, underscoring the lack of study of this measure and the lack of evidence in the record that retrofits can address the potential problem of adequate water. The informational purpose of CEQA have not been fulfilled.

The County admits it does not have a fee program; conflicting statements in the staff report speculate on the potential adequacy of a County fee program as a viable mitigation. The fact remains that there is no County fee program to address groundwater depletion in Nipomo, and the County has specifically ceded this responsibility to the NCSD. The discussion of the NCSD program in the Negative Declaration makes it clear that the program is subject to a vote that has not yet been taken. Hence there is no substantial evidence in the record that any identified mitigation measures will be sufficient.

Given that the Planning Commission's approval of a project that relies on an increase in water conservation and the provision of supplemental water via a project which must be approved via an assessment vote of Nipomo parcel owners, and in the absence of foreknowledge of the outcome of that vote and other additional significant information and analysis, if the Board does not find that a project EIR is required, recirculation of the Negative Declaration must be revised and recirculated for comment, pursuant to 14 CCR § 15088.5(a)(1). Sierra Club therefore appeals the Planning Commission's certification of the Negative Declaration and requests reconsideration of this decision by the BOS, pursuant to 14 CCR § 15090(b).